

Purchase of property pursuant to a lease agreement containing a nominal purchase option at the end of the lease term would be considered a conditional sale. All payments received by the lessor in such situation are subject to the Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010(a). (This is a GIL.)

July 10, 2003

Dear Xxxxx:

This letter is in response to your letter dated April 14, 2003. The nature of your letter and information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

We are writing to request Illinois's determination of the taxability of the following transaction.

AAA will be financing automobiles under a type of contract called a CONTRACT (hereafter called 'Retail Balloon Contract').

Under a Retail Balloon Contract, the consumer makes regular monthly installment payments; however, the final installment is a balloon payment. The specifics of the Retail Balloon Contract are discussed below.

Explanation of Retail Balloon Contract

The transaction begins when the consumer signs a Retail Balloon Contract for the full sales price of the selected vehicle, including applicable taxes. Sales taxes are computed and charged on the value of the vehicle, plus any other taxable items. The consumer takes title to the vehicle. The dealer immediately assigns the Retail Balloon Contract to AAA. AAA funds the dealer for the full amount including applicable taxes, then, AAA holds a security interest in the vehicle. The dealer remits the taxes to government agencies.

The consumer makes monthly installment payments to AAA for the term of the Retail Balloon Contract. At the time the last installment (the Balloon Payment) is due, the consumer has 3 options for terminating the Retail Balloon Contract.

- 1) **'Payment Option'** -- pay the last installment.
- 2) **'Refinance Option'** -- re-finance the last installment.

- 3) **'Return Option'** -- return the vehicle with the following agreement:
- a) The consumer must pay any Excess Mileage Charge for miles over the allowance specified in the Retail Balloon Contract. This charge is stated in cents per mile.
 - b) The consumer must pay any Excess Wear and Use Charge. The Excess Wear and Use charge is the specific cost of making repairs or replacements from conditions that are not the result of normal wear and use.

Questions

For purposes of the Illinois Sales and Use Tax,

- 1. Under a Retail Balloon Contract, is the consumer's acquisition of the vehicle considered to be a sale or a lease?
- 2. Under the 'Return Option' (item 3 above), is the Excess Mileage Charge taxable?
- 3. Under the 'Return Option' (item 3 above), is the Excess Wear and Use Charge taxable?

We appreciate your addressing these questions and look forward to the reply. If there are questions, kindly contact me.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Illinois imposes a Use Tax on the privilege of using in this State any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. If a sale does not involve the transfer of tangible personal property to the purchaser, then the Illinois Retailers' Occupation and Use Taxes do not apply.

The gross receipts from the leasing of tangible personal property in Illinois under a true lease agreement are generally not subject to sales tax. In a true lease there is no buy out provision at the close of the lease, therefore the property remains the property of the lessor. If a buy out provision does exist, the lease may still be considered a true lease if the buy out option is for the fair market value of the leased property. Persons who, under true leases, rent or lease the use of automobiles under lease terms of more than one year are not engaged in the business of selling tangible personal property at retail and are not required to remit Retailers' Occupation Tax measured by their gross receipts from such transactions. See 86 Ill. Adm. Code 130.2010(b), enclosed. Such lessors of tangible personal property under true leases in Illinois are deemed the end users of the property to be leased. See 86 Ill. Adm. Code 150.305(e). As the end user, the lessor incurs a Use Tax liability on the cost price of the property when purchased and remits the use tax to the State. The Use Tax incurred by the lessor may not be passed on to the lessee as a tax.

Where a lessor of tangible personal property purports to lease the use of property but in fact sells the tangible personal property to a nominal lessee, the lessor has made a conditional sale, which is subject to Retailers' Occupation Tax. Purchase of property pursuant to a lease agreement containing a nominal purchase option at the end of the lease term would be considered a conditional sale. All payments received by the lessor in such situation are subject to the Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010(a).

Receipts from the rental of automobiles in Illinois for lease terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. See 35 ILCS 155/1 et seq. Persons engaged in Illinois in the short-term automobile leasing business are taxed at a rate of 5% of the gross rental receipts. See 86 Ill. Adm. Code 180.101, enclosed. A corresponding Automobile Renting Use Tax is imposed upon the privilege of using in Illinois an automobile rented under a lease term of one year or less. See 86 Ill. Adm. Code 190.101, enclosed. The duty is on the lessor to collect the Automobile Renting Use Tax from the lessee at the time of delivery and to remit the tax to the State.

We are unable to make any determinations as too little information has been provided detailing the contract provisions. I hope this information has been helpful. We would be happy to provide additional assistance upon provision of more specific information.

The Department of Revenue maintains a website, which can be accessed at www.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in item 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our website mentioned above.

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
Enc.